

IN THE COURT OF APPEAL OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) / 264 / 2006

Provincial High Court of

Western Province (Colombo)

Case No. HCRA 741 / 2005

Magistrate's Court Mount Lavinia

Case No. 826/S/03

G Wijitha Pieris,

128,

Alan Mawatha,

Dehiwala.

RESPONDENT - PETITIONER -

APPELLENT

-Vs-

Mithrasena Wickremage,
Acting General Manager,
National Water Supply and
Drainage Board,
Galle Road,
Rathmalana.

COMPLAINANT -

RESPONDENT - RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Tenny Fernando for the Respondent – Petitioner - Appellant.

Suranga Wimalasena SSC for the Complainant Respondent
Respondent.

Argued on : 2017 – 07 – 14

Decided on : 2017 - 10 - 04

JUDGMENT

P Padman Surasena J

The Complainant - Respondent - Respondent (hereinafter sometimes referred to as the Respondent) had issued a quit notice on the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant), in terms of section 3 of the State Lands (Recovery of Possession) Act (hereinafter sometimes referred to as the Act).

As the Appellant had failed to respond to the said quit notice, the Respondent had thereafter made an application under section 5 of the Act to the Magistrate's Court of Mount Lavinia seeking an order to evict the Appellant from the land described in the schedule to the said application.

Learned Magistrate after an inquiry had pronounced the order dated 2005-01-25 evicting the Appellant from the said land on the basis that he had failed to produce a permit or due authority to remain in the said land.

Being aggrieved by the said order of the learned Magistrate, the Appellant had filed a revision application in the Provincial High Court of Western Province holden in Colombo seeking a revision of the order of the learned Magistrate.

The Provincial High Court after the conclusion of the argument, had pronounced its judgment dated 2006 -11-21, holding that there is no basis to deviate from the conclusions arrived at by the learned Magistrate. The Provincial High Court on that basis had proceeded to dismiss the said revision application.

It is that judgment that the Appellant is canvassing in this appeal before this Court.

Upon consideration of the material adduced in this case this Court is unable to see any basis to assail the orders of the lower Courts as the scope of the inquiry to be conducted by the Magistrate is very limited one in the proceedings of this nature.

It must also be noted that section 9 of the Act sets out the scope of the inquiry to be held before the Magistrate in following terms;

"... At such inquiry the person on whom summons under section 6 has been served shall not be entitled to contest any of the matters stated in the application under section 5 except that such person may establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid. ..."

This is so particularly in view of the conclusion by this Court in the case of Muhandiram vs. Chairman, No.111, Janatha Estate Development Board¹ which is to the following effect;

" ... Unless the respondent-petitioner had established before the learned Magistrate that he was in occupation of the land stated in the schedule to

¹ 1992 (1) SLR 110

the application on a valid permit or other written authority of the State, he cannot continue to occupy the said land and in terms of the State Lands (Recovery of Possession) Act, No. 7 of 1979, the Magistrate has to make an order directing the respondent and his dependents to be ejected from the land. ...”

It appears that the Appellant in the High Court had relied on the judgment of Supreme Court in the case of Senanyake V Damunupola². It must be born in mind that the above judgment relates to an application for a writ of certiorari and not a proceeding in the Magistrate’s Courts under section 5 of the State Lands (Recovery of Possession) Act. Therefore, the said judgment has no application to this proceeding.

It is relevant to note in this regard that the Supreme Court in a judgment pronounced recently, in the case of Divisional Secretary Kalutara V Kalupahana Mestrige Jayatissa³, considered the application of the above judgment to the proceedings in the Magistrate’s Court under section 5 of the State Lands (Recovery of Possession) Act.

² 1982 (2) Sri L R 621.

³ SC Appeal 246,247,249 & 250/14, Decided on 2017-08-04.

It would be helpful to reproduce the following passage from that judgment which is as follows;

" In my view, the Court of Appeal fell into further error when it held that "the right or title of the State of the disputed land is doubtful"

The Court of Appeal had relied on the judgement of this court in the case of Senanayake vs. Damunupola 1982 2 SLR 621. In the said case a "notice to quit" issued in terms of section 3 of the Act had been challenged by way of a writ and there had not been an order of the Magistrate under section 5 of the Act. In the said case it had been pointed out that part of the land covered by the "notice to quit" included part of the residential premises of the appellant and the matter however, had not reached the Magistrate's Court. What was in issue was the legality of the administrative action taken by the Government Agent.

A writ had been issued in the said case, quashing the quit notice on the facts and circumstances peculiar to the said case.

In the present case, it had reached the Magistrates Court and order for eviction had been issued and what is challenged is the legality of the order

made by the Magistrate. The Act, however, provides a remedy to a legitimate owner to vindicate his rights by filing an action in the District Court in terms of Section 12 of the Act and in terms of Section 13, the State becomes liable to pay damages if it is established that the property in issue does not belong to the State.

As such, I am of the view, that the decision of Senanayake V. Damunupola (supra) has no application to the present case and the Court of Appeal had misdirected itself in that regard.”

Further, learned DSG brought to the notice of this Court another judgment of the Supreme Court in the case of L H M B B Herath, Chief Manager Welfare and Industrial Relations, Sri Lanka Ports Authority V Morgan Engineering (Pvt) Ltd.⁴ the Supreme Court in the said judgment had held that section 9 of the Act has placed limitations on the scope of the inquiry which should be conducted by the Magistrate.

As the State Lands (Recovery of Possession) Act has been enacted for the speedy recovery of state lands from unauthorized possession or

⁴ SC Appeal 214/2012 decided on 2013-06-27.

occupation, the Supreme Court went on to state in the above judgment as follows;

"... if the language of the enactment is clear and unambiguous, it would not be legitimate for the Courts to add words by implication into the language. It is a settled law of interpretation that the words are to be interpreted as they appear in the provision, simple and grammatical meaning is to be given to them, and nothing can be added or subtracted. The Courts must construe the words as they find it and cannot go outside the ambit of the section and speculate as to what the legislature intended. An interpretation of section 9 which defeats the intent and purpose for which it was enacted should be avoided. ..."

In the instant case, it is clear upon consideration of the material adduced before this Court, that the Appellant has failed to establish that he is in possession or occupation of the said land upon any written authority of the state granted in accordance with any written law and that such authority is in force and not revoked or otherwise rendered invalid as required by section 9 of the Act.

Thus, this appeal must necessarily fail.

For the foregoing reasons, this Court decides to dismiss this appeal with costs.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL